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In the Matter of Fact Finding:

KENOWA HILLS PUBLIC SCHOOL BOARD
Grand Rapids, Michigan

and

KENOWA HILLS EDUCATION ASSOCIATION
Grand Rapids, Michigan

before

Samuel S. Shaw, Fact Finder

Employment Relations Commission
Department of Labor, State of Michigan

on

October 5 and 6, 1972

REPORT AND RECOMMENDATIONS

Appearances

For the Board

Terry J. Lroz, Attorney
Marvin Koets, Superintendent

For the Association

Geoff Masters, Executive
Director, UNISERV Unit 5-F
Michael Stephens, Chairman

Kenowa Hills Public Schools

Pursuant to a petition filed by the Kenowa Hills Education Association (hereinafter referred to as the "Association") on August 2, 1972, the Michigan Employment Relations Commission appointed the undersigned as Fact Finder in the matter between the Association and the Kenowa Hills Public School Board (hereinafter referred to as the "Board").

Facts and Background

The Kenowa Hills School District is located in central western Michigan, and except for one school in Ottawa County, all its public school facilities are located in northwest Kent County. The District includes the City of Walker, and parts of Alpine, Plainfield, Wright, and Tallmadge Townships.

The area serviced by the District is part rural, part middle American residential, and part industrial. However, in the past several years it has shown a marked increase in its industrial development.

The 1972-73 enrollment is approximately 3570 pupils. This includes some migrant workers' children who are enrolled through the fall harvest season.

The staff consists of 161 full time classroom teachers, plus three teachers on a four day a week basis.

These teachers are represented by the Kenowa Hills Education Association, an affiliate of the Michigan Education Association. The last Agreement between the Association and the Board was for one year and expired on August 31, 1972. Since that date, the teachers of the District have been working on a day-to-day verbal understanding.

Negotiations between the parties did not produce a new agreement, nor was the Employment Relations Commission of the State of Michigan able to mediate the differences. Therefore, a petition was filed by the Association with the Commission listing the issues still unresolved, and requesting Fact Finding under Section 25 of Act 176 of the Public Acts of 1939 as amended.

A public fact finding hearing was held in the Auditorium of the Kenowa Hills High School on October 5, 1972, from 7:30 P.M. to 10:30 P.M. As the business of the Hearing was not completed, it was adjourned and reconvened on October 6; the first meeting in the Administration Building from 1:00 P.M. to 5:00 P.M., and the second in the cafeteria of the Walker Junior High School from 7:00 P.M. to 2:00 A.M.,October 7.

Both Parties were represented and given full and ample opportunity to present both written and oral evidence and arguments in support of their respective positions. The proceedings were tape recorded by the Fact Finder.

Both Parties submitted memorandum briefs covering their respective positions on the monetary issues, and agreed to mail them to the Fact Finder postmarked no later than October 13, 1972.

The Hearing was declared closed upon receipt of these Briefs.

Discussion

The area of dispute can be divided into contractual issues and monetary issues. The contractual issues are reviewed first, and separately.

Article III Board of Education Rights

Section 15, (e):

> "in conjunction with the teachers to determine (excluding summer months) class schedules, laws of instruction and duties, responsibilities and assignments of teachers, and other employees with respect thereto, and non-teaching activities, and the terms and conditions of employment - the Board shall have final authority."

The above language appears in the 1971-72 Agreement. The Parties, in negotiation, agreed that the wording underlined in the above should be deleted in the 1972-73 Agreement. However, the Board also requested that the words "in conjunction with the teachers" be deleted. The Association is opposed to this request.

The Association's primary argument was that the language appeared in the 1971-72 Agreement, and did not create any problem. Further, that as the "professionals" involved, the teachers should be consulted before decisions are made concerning the above matters. Further, that the provision did not dilute the Board's authority, inasmuch as it provided for final authority resting with the Board. The Association cited 13 area Districts whose contracts, it was alleged, contained the same provision as Kenowa's Section 15, (e).

It was the Board's contention that the determination of class schedules, laws of instruction and duties, and the responsibilities and assignments of teachers, was the sole responsibility of the Board, and that a requirement that the teachers should be consulted prior to any determination was an encumbrance that should not be imposed. Further, that such a provision encroached upon the Board's right to manage.

The Fact Finder researched the Michigan School Code of 1955 as amended, particularly Section 15 - .3578, .3583, and .3614, and is

satisfied, that by this Statute, the responsibility for the management and operation of the District is placed directly upon the Board. Further, that this responsibility includes the subject matter covered in Section 15, (e) of the previous Kenowa Agreement.

Also, the Fact Finder personally talked with the administrative heads of seven of the thirteen districts cited by the Association as having a like, or similar, provision. Although all have councils or committees to advise the board on matter of curriculum, textbooks, teaching equipment, etc., none of the contracts provide for the boards of education to determine matters of teacher duties, assignments, responsibilities, or class schedules in conjunction with the teachers.

Considering the direction imposed by statute, plus the practice in area districts, it appears to the Fact Finder that even though the teachers were consulted prior to any decision in these matters, this consultation would have little practical effect on the final decision. Inasmuch, as such decision must be those of the Board and cannot be delegated to anyone else, it would seem that a requirement to consult with the teachers before making those decisions would only complicate the process of administration.

Therefore, as the matters in question are legally and rightfully a responsibility of the Board, and not that of the teachers, and as the words "in conjunction with the teachers" would serve no useful purpose, it is the Fact Finder's recommendation they be deleted from Section 15, (e) in the 1972-73 Agreement.

Sub-section F.

A Racial-Religious Attitude test was given 526 Kenowa Hills High School students in March 1970. This test indicated the students tested were not only lacking in knowledge and appreciation of minority groups, but were veryprejudiced in their thinking towards these groups. The Association felt this situation should be corrected,and as one step in this direction,the staff should include teachers representing minority groups. To accomplish this, the Association requested the following provision be incorporated in the 1972-73 Agreement.

> "The Board of Education and the Teacher's Association recognize that America is a mixture of racial, religious, philosophical and political groups. To provide the broadest experience possible to the students, the Board agrees to preferential hiring to qualified applicants representing minority groups. This Board further agrees to advertise and actively seek members of minority groups."

If this single test can be considered as representative of the entire Kenowa Hills student body, the Fact Finder agrees the situation indicates the need for some affirmative action. However, whether the route recommended by the Association is the proper one, is a question. Although the Fact Finder is not a sociologist, it seems to him the test results highlight a lack of knowledge as to the definition of minority or religious differences. For example, although many of the present staff are Catholic, the test results indicates this is a "group" that should not be given equal status.

The Board's position on this question was that it was covered by Federal and State laws, and therefore, should not be a contractual provision.

Although the Fact Finder agrees the need for corrective action is

most desirable, he feels, that to be effective, any program should be mutually developed and mutually implemented, rather than to be a contractual requirement. Further, the best interest of such a program would not be served by incorporating into a contract a provision which, in itself, is discriminatory.

Therefore, it is the recommendation of the Fact Finder that the provision suggested by the Association not be included as a contractual provision in the 1972-73 Agreement, but that the Parties develop a program to meet the Association's objectives.

Article V. - School Calendar 1972 - 1973

The 1971-72 Agreement called for a total of 187 contract days, of which 182 were instruction days.

The Association requests the 1972-73 Agreement reduce this amount to 186 contract days with 181 instruction days. The Association contended this request was in-line with other districts in the Kent County area. Further, that the request met the State's minimum requirement of 180 instructional days.

The Board's position was that they did not feel the Kenowa Hills District should be governed by a minimum requirement, and that the students should be given as many days of instruction as could reasonably be expected. For this reason, the Baord stated they believed 187 contract days and 182 instruction days should not be reduced any further.

Although the Fact Finder agrees with the philosophy of the Board, he was strongly influenced by prevailing practices in the area districts.

A review of nineteen districts indicates that thirteen provide for a contract year of 186 days or less. Twelve of the nineteen call for

181 or less instructional days.

Although the Fact Finder agrees the line has to be drawn at some point, he does not see any real justification for Kenowa Hills to require more contract or instructional days than its neighboring districts.

The Association's request falls reasonably within the mean average. Therefore, it is the Fact Finder's recommendation that the 1972-73 Agreement provide 186 contract days and 181 instructional days.

Article VI. - Teaching Hours.

Section 24.

This Section in the 1971-72 Agreement reads:

> "Teachers in Grades 1-5 shall be given 100 minutes of planning time per week within the framework of the specialists program."

The Association requests the above 100 minutes be increased to 150 minutes in the 1972-73 Agreement.

The Association contended that the additional time was necessary for proper classroom and instructional planning. Two elementary teachers, Mrs. Hull and Mrs. Abbott, testifying in behalf of this request, effectively explained their daily work load and planning problems.

The Board's position was that if this request was granted, the individual student tutoring program would have to be cancelled, or additional teachers hired. The Board contended that neither alternative was feasible at this time.

To better understand this issue, the Fact Finder did some calculating and arrived at the following figures.

Teachers report at 8:15 A. M. and leave at 3:45 P.M. Classes start at 8:45 and close at 3:30. This leaves 45 minutes total before and after

class time. Recess time is 30 minutes per day. However, each teacher covers the recess period on the average of one day per week. Subtracting this one day leaves 24 minutes as the daily open time average for recess periods. There are 170 minutes per week of music, art, and physical education during which the regular teacher is open. This amounts to an average of 34 minutes per day. These three items total 103 minutes per day.

From this total non-teaching time the following was subtracted. 12 minutes average per day of scheduled tutoring time. This is on the basis of 2 thirty minute periods per week. 20 minutes per day planning time. This is on the basis of 100 minutes per week divided by 5 days. Subtracting these two items totaling 34 minutes from the above 103 minutes, leaves a balance of 71 minutes per day of unallocated open time. This amounts to one hour and 11 minutes per day, or 5 hours and 55 minutes per week. This is over and above a full 60 minute lunch period.

The Fact Finder realizes that these figures can be misleading as it is impossible for anyone to productively utilize every available minute. Further, there are a myriad of routine duties that have to be performed by a teacher, and take time.

At present, the 100 minutes per week planning time is taken from the 170 minutes during which special programs are being taught by another teacher. The remaining 70 minutes is used for individual tutoring. Under the Association's proposal, the additional 50 minutes requested for planning would be taken from this remaining 70 minutes, and effectively eliminate this individual tutoring, at least by the present teachers.

The Fact Finder does not feel that at this time the Kenowa Hills School District can be expected to add to its teacher cost load. If the

Association's request was granted, the probable alternative would be the elimination of individual student tutoring; an alternative that would not satisfy anyone. Therefore, inview of the unallocated time that is theoretically available to elementary teachers, an amount reasonably comparable to that available to secondary teachers,and that provided by other districts, and further, as the tutoring program should be retained if at all possible, the Fact Finder recommends that the 100 minutes of planning time not be increased at this time. However, it is recognized that adequate planning is a necessary element in an effective teaching program, and this recommendation should not be considered as a solution to the problem.

At the present time, Kindergarten teachers supervise their own recess periods. The Association requested that a provision be added to Article VI relieving Kindergarten teachers of this duty,and transfering it to Grade 1-5 teachers. The Association claimed this arrangement would provide a more equitable distribution of free time.

The Board offered no alternative suggestion. However, it was opposed to the Association's request,for the stated reason that it was felt the Kindergarten teachers would better understand their children if they observed them outside the classroom.

In the majority of Kent County school districts recess duty is rotated and they do not differentiate between Kindergarten teachers and Elementary teachers. Although the Board's argument is recognized, the Fact Finder does not feel the Association's request is unreasonable, particularly as it would not increase the cost load to the District. However, he does not feel it would be fair to expect the Elementary teachers to assume all of the responsibility for Kindergarten children during their

recess periods, and for Kindergarten teachers to have none at all. Therefore, it is the recommendation of the Fact Finder that Kindergarten teachers be included in the recess duty rotation schedule on the same basis as the Elementary teachers. Although this may not give the Kindergarten teachers as much free time as that of the Elementary teachers, it will provide an equitable distribution of the recess duty.

Article VII, Teaching Loads

Section 26.

The 1971-72 Agreement sets forth a building ratio of 29 to 1 for K-5 classes. This means that in a given building there will be one teacher for every 29 pupils. However, there is no restriction to the number of pupils that a teacher can have in a single class. The Association requests that this building ratio be eliminated and substituted for a class size not to exceed 29-1.

The Association's basic argument, in support of its request, was that teacher effectiveness decreased with an increase in class size and, therefore, there should be a restriction as to the number of pupils in any given class.

The Board contented, that even though the Association's argument might have merit, certain problems peculiar to the Kenowa Hills District made a class size ratio unworkable. The particular problem referred to by the Board was the influx of migrant workers' children at the beginning of the school year. The Board contented there was no way of determining in advance how large this group would be, and that most of these children withdrew at the end of the harvest season. The Board stated it was not economically feasible to hire an extra teacher for two or three months

and then have that teacher in excess, after the migrant children left. Further, this problem was most apparent at the Alpine school, and it was not either reasonable, or desirable, to consider bussing any extra children to another school or district.

The merit of the Association's argument is generally accepted by the majority of people in the field of education. Also, that a building ratio may not, under some circumstances, keep class sizes within accepatable limits. However, the practical aspects of the Board's argument must be considered, particularly with regard to the economic burden that an inflexible class size ratio could impose upon the District.

After considering the position of both Parties, the possible alternatives, and the experience of other districts, the Fact Finder feels the most reasonable means of handling the problem is in the use of Teacher's Aides.

Teachers's Aides are generally available in most districts, and can be hired on a temporary, or part time basis, thus keeping the financial burden on a district at a minimum. They can be effective in assisting a teacher by keeping childrens' attention and maintaining discipline, and by so doing permit a teacher to handle a larger group.

Therefore, it is the recommendation of the Fact Finder that a class size ratio of 29-1 be established. However, any individual teacher can agree to handle in excess of this ratio at his, or her, option. If no agreement is reached, a Teacher's Aide will be employed to assist that teacher for so long as the class size exceeds 29-1. This ratio shall not apply to special classes (e.g. Physical education, music, and art.).

This recommendation applies only to K-5 grades.

Article VII. Teaching Loads (cont.)

The 1971-72 Agreement provided that "counselors teaching shall be restricted to group counseling classes such as Practical Ed, Family Living, Orientation, etc." The Association requested the following be added to the 1972-73 Agreement.

> "That Counselors' teaching responsibilities be restricted to 1/6 load in Junior High School and 1/5 load in Senior High School."

The Hearing produced considerable evidence with respect to the desired ratio of counselors to students. From this the Fact Finder is satisfied this optimum figure is in the area of 350 to 450 students per counselor. However, as Kenowa Hills with its present staffing falls within this ratio, the ratio as such is not at issue.

The request of the Association was directed, not at the ratio, but to the number of classes a counselor should be required to handle inaddition to his counseloring duties.

Twenty four area districts were submitted as exhibits on this question. Of these twenty four districts, only five require their counselors to do any teaching, Kenowa Hills being one of these five. The Fact Finder varified these figures by personally contacting ten of the twenty four districts.

However, he found counselor teaching requirements were governed by an internal district policy, and in no case was it controlled by a contractual provision.

Requiring that a counselor be exposed to some teaching as a means of increasing his effectiveness as a counselor appears to be a divided opinion. However, from the information supplied and the investigation of the Fact Finder, it seems the consensus is that the teaching should

be minimal, if at all.

In this case it appears the Association's request was not prompted so much by the philosophical aspect of the problem as it was to prevent the Administration from adding more counselors and then adding to the teaching load of the counselors already on the staff.

As a layman, the Fact Finder will not attempt to pass judgement on the question of whether or not some teaching should be assigned counselors. However, there should be some reasonable limit, and if the Parties cannot agree to some practical ratio as a working policy, the only alternative is to make it a contractual provision. In light of the experience of other districts, it would not seem this alternative should have to be resorted to at Kenowa Hills. However, if agreement cannot be reached, inasmuch as the Association's request is not completely contrary to prevailing practice, it is recommended it be accepted.

Article VII. Teaching Loads

The Association requested "No Junior High School teacher be required to have more than four (4) consecutive classes ", contending "any teacher having four continuous teaching assignements without relief, or break, is less effective in meeting his instructional obligations to his students."

The Board offered no counter proposal to this request, contending "it is not possible to schedule junior high school classes in accordance with the demand of the....Association."

The contention of the teachers is reasonable, but also, the scheduling problem is obvious. The majority of area contracts make no limitation on the number of consecutive teaching hours. Some provide for a basic teaching schedule, but do state whether or not they can, or cannot, be consecutive.

The desirability of spacing the teaching load is obvious. However,

it is also quite apparent that to provide all teachers with a minimum of four consecutive classes would create a monumental scheduling problem. Even if it could be done for the majority of teachers, it would hardly be equitable unless it could be done for all, with a potential problem with those who could not be so scheduled.

As desirable as the Association's request may be, it does not appear to the Fact Finder as being practical when one considers, that in addition to classes, a schedule has to provide for lunch, home room, study periods, etc.

Therefore, the Fact Finder does not recommended that the Association's request be adopted.

Article VIII. Assignments

Section 29.

The Association requested that a maternity leave provision include a "guaranteed position, i.e., original assignme nt, to the teacher returning from an approved leave for pregnancy." The Association argued that "pregnancy is a natural human phenomena, and should not be treated differently than those other sick leaves that guarantee return to position." Further, that a teacher could be hired on a temporary basis to fill the postion created by a pregnancy leave. thereby enabling the teacher on leave to return to her exact former position. The Association contended that there were many teachers available for such temporary assignment.

The Board contended they did not approve the use of teachers hired on a temporary basis. It was claimed they would not have the same interest in the school as teachers hired on a permanent basis.

The Fact Finder does not agree with the Board's argument that a teacher hired on a temporary basis would automatically "not have the same sense of committment as one hired to permanently fill a vacancy." Although it might be the result in some cases, it is not axiomatic, and as such should not be the only basis for the Board's position.

The Fact Finder did find, however, that hiring a teacher on a temporary basis could create other problems. He was told by competent authority, that under the teachers' tenure law, a teacher could not be put under contract on a temporary basis. Further, that a contract teacher can only be terminated for "just cause", and it was very doubtful the dropping of a teacher because of a returnee would be considered "just cause." The only alternative would be to hire a temporary replacement on an hourly basis. As this teacher would be outside the contract, it could create problems for both the Board and the Association.

A review of the contractual provision in other districts, indicates that a teacher returning from maternity leave is returned to a comparable position, or status, if such a position is available. If not, to a position for which the teacher is qualified. Language found in several agreements is "the Board (or Administration) will make every reasonable effort to return the teacher to a comparable position."

The Association offered a full maternity provision proposal which is much more comprehensive than the current language of Section 29, Article VIII. It is recommended that this be used, with one change in the language of the last sentence in paragraph 1.

To guarantee re-employment to the same position would, in the opinion of the Fact Finder, place an almost impossible burden on the

Administration. Therefore, it is recommended this last sentence be revised to read: A teacher returning from such leave will be re-employed in a comparable position if a vacancy exists, or to an open position for which the teacher is qualified. If no vacancy exists, that teacher shall have first priority to the first open position for which the teacher is qualified.

Article X. Sick Leave

Section 44

This Section in the 1971-72 Agreement provides for probationary teachers to have 1 day of sick leave designated as a personal business day, and 2 days of sick leave designated as personal business days for regularly employed tenure teachers.

The Association requests that all regularly employed teachers be granted two days as personal business days. Also, that notification of a personal business day be 7:00 A.M. instead of the current 24 hours.

The Board agreed to the change in notification time, but objected to two days for probationary teachers, arguing that, as a benefit, the additional day should be restricted to tenure teachers. Further, that the provision should contain language restricting personal business to extra-ordinary situations, and excluding attending conferences and seeking other employment.

As far as the two days for probationary teachers is concerned, not withstanding the fact that any days are a "benefit", if two days are considered necessary for tenure teachers, the fact a teacher is a probationary teacher does not reduce this need. It would seem, therefore, that this is a "benefit" that should not be discriminately awarded.

The purpose of this provision is to provide time-off to take care of personal matters that can only be handled during school hours. As such, limiting its use to extraordinary situations, as requested by the Board, is not unreasonable. Among the excluded purposes was use as an additional holiday or for the purpose of seeking other employment. However, the Fact Finder agrees with the Association's position that attendance at a conference or workshop should not be on this excluded list. The Board's concern that too many teachers might be off at one time is understandable; however, this could be regulated by placing a reasonable limitation on the number of teachers that could be absent at any one time. Time off requests could be approved on a first come basis, not to exceed 10% of the total staff.

As to the Board's contention that each teacher taking a personal day off be required to advise the Administration of what they did on the day-off, the Fact Finder is of the opinion that such a rule would serve no practical purpose. Any teacher who knowingly abused this personal day-off privilege would hardly incriminate himself by reporting he used the day-off for personal pleasure. A more practical approach would be to establish mutually acceptable restrictions, and if a violation did occur, and could be established, the Board could take appropriate disciplinary action.

It is recommended the Parties draw up a covering provision within the above guidlines.

Article XI. Professional, Personal and Association Leave.

Section 45.

The issue here is the same as that put forth on the question of return from maternity leave, in that the Association requests a returnee from leave be guaranteed his or her return to original position.

The Fact Finder's opinion in this question is the same as that in the maternity leave question. A person who takes an extended leave of absence, by his own choice, should not expect to be returned to the identical position he held before going on that leave, unless that position is open. It is agreed the Board should make every reasonable effort in that direction, but to oust another teacher who has held a postion for a year or more, solely to accomodate someone who elected to take a leave of absence, does not seem equitable. Further, such action could conceivably require the District to carry an extra teacher for an extended period, with the unnecessary increase in the cost load.

Article XIII, Student Discipline and Teacher Protection
Section 53.

The area of dispute in this issue is solely in the length of time chargeable to sick leave, in the event a teacher is injured as a result of an assault by a student or students.

The Association contends a teacher should have unlimited sick leave, if said teacher is blameless in the incident. The Board contends it cannot commit the District to an indefinite financial liability.

From a moral point of view, it is easy to agree with the Association's argument that a teacher should not lose compensation because of an assault by students, regardless of the length of time involved in recovery. On the other hand, the Board's argument has merit.

The 1971-72 Agreement provides for a limit of 80 calendar days that may be charged against sick leave. To this is added 15 days annual sick leave, plus sick leave bank time. This would total more than three months

Although the Fact Finder has no information or figures relative to injury recovery times per occurance, from a practical standpoint it would seem that it would be a rare occasion when an injury from student assault would be such as to require more than three months recovery time.

Further, such an incident would undoubtly come under Workman's Compensation and thereby could extend compensation coverage up to several years if the circumstances justified.

The Board's reluctance to commit the District to indefinite liability is not only understandable, but it might be well argued that such a committment was exceeding the limits of their jurisdiction.

Considering all factors, the Fact Finder feels the present coverage limits are realistic, and from a practical standpoint are sufficient so as not to create a hardship on any teacher that might be put in a position where they would have to be applied.

Article XIV, Teacher Evaluation
Sections 56-61.

The Parties are in general agreement as to the procedure of observation with respect to number and length of time. Further, they are in agreement the year's final observation will be completed by March 15.

The only area of disagreement is how many days should elapse after an observation, before the conference concerning the evaluation is held with the teacher. The 1971-72 Agreement calls for " within 15 days". The Board agreed to modify this to 10 days, but the Association requests this be reduced to 5 days.

The Board argued that 5 days would place a prohibitive burden on the Administration, while the Association argued, that to be effective the conference and subsequent evaluation should be as soon as possible, at least within 5 days.

One thing that should be kept in mind is, that although all evaluations are important, by far the most important to all concerned is a negative evaluation. This could affect salary step progression, reaching tenure status, and/or continued employment by the District. From the Administration's position, any serious deficiency in a teacher's performance should be corrected as soon as possible. On the other hand, an acceptable evaluation, although it may contain corrective suggestions, does not have near the impact.

With this in mind, it would seem most desirable that a negative evaluation be taken up with the concerned teacher within 5 days. However, an acceptable evaluation could be extended to 10 days after the observation, without creating a problem for the teacher or damage to the educational process.

If such a schedule is considered too demanding by the Administration, the Parties might consider reducing the number of evaluations of tenure teachers. The Fact Finder is aware that the present two per year was at the request of the Association. However, many comparable districts evaluated tenure teacher once a year, and find that it does not have an adverse affect on the evaluation process.

Also, the number and length of the observations might be reviewed, with the possibility of reducing or shortening. It is understandable

why a negative evaluation should be supported by adequate observations, and represent a fair and equitable sampling of a teacher's performance. However, it is difficult to understand why the same amount of support is needed to substantiate an acceptable evaluation. It would be of no advantage to either Party to impose unnecessary work on the administrative branch; therefore, any avenue that might reduce this load should be explored.

The Association also requested that a provision be included in this Article that would provide, that in the event the evaluation schedule could not be met, an acceptable evaluation was automatic.

Although the Fact Finder understands the purpose behind the Association's request, the language proposed by the Association can only be interpreted as punitive and quite arbitrary. There are many reasons that could interfere with the maintenance of an inflexible evaluation schedule, and to impose a penalty that might continue the employment of an inadequate teacher if that schedule is missed, seems too high a price to pay. It is suggested, that if the 5 day limit for unacceptable evaluations is adopted, the Administration be given an additional 5 days to hold an evaluation in the event of an unexpected and abnormal situation. If the Association does not agree with the reasons for the extension, they may refer it to the Grievance Procedure. Although this suggestion may not satisfy the problem, in the opinion of the Fact Finder it would be better than the inflexible language with its undesirable potential proposed by the Association.

Article XIV Teacher Evaluation

Section 60

This Section reads as follows in the current Agreement:

"No teacher shall be disciplined, reprimanded, reduced in rank or compensation or be deprived of any professional advantage without just cause. An adverse evaluation that jeopardizes his position shall be subject to the Grievance Procedure."

The Board requested the words "or deprived of any professional advantage" be deleted. The reason given was that no one could supply a definition of what constituted "professional advantage", therefore, the Board did not feel it should accept it as a contractual obilgation.

The Fact Finder finds that language similar to this appears in many area districts' agreements. Although he was unable to find a precise definition for the language in question, no one reported encountering any particular problems in its interpretation. However, in the FactFinder's understanding as to the intent of this language, he feels the word "benefit" instead of the word "advantage" would probably better express this intent, and would be more easily accepted by all parties concerned. Therefore, it is recommended this change be incorporated in any future provisions.

The Board also requested the last sentence of the above provision, providing for grieving of adverse evaluations, be deleted. The Board argued that it was an administration function to make independent evaluations; therefore, there was nothing grievable unless the evaluation was applied in a manner which harmed the individual evaluated.

Although not necessarily the case at Kenowa Hills, in his research on this question,the Fact Finder was informed the original incorporation into contractual agreements of a formal evaluation procedure was at the request of the teachers. Prior to this,it was a hit or miss judgement made solely by the administration, and the purpose behind the request to

formalize the evaluation was to keep it out in the open, and give teachers a chance to make performance corrections before it became a major issue. If this information is correct, it is difficult to understand the logic behind a procedure that requires an opinion be given, and then provides it can be brought to trial if not favorable. Further, it should be realized an evaluation is only a subjective judgement, and as such, it would be difficult to establish anything objective to which a legitimate challenge could be directed.

The Fact Finder finds there is no specific pattern in the manner this issue is handled by area Districts. Some provide for grieving, most make no provision, and some specifically exclude evaluations from grievance.

However, despite the thinking outlined above, and the lack of an established pattern, under the circumstance, the Fact Finder feels the provision in question should not be deleted at this time. It has been in the Agreement for some time, and according to the record has not been abused by the Association or resulted in "nuisance" grievances.

Salary and Professional Compensation

The Association made request for increases in pay in three areas. (1) A 5½ percent salary increase over the 1971-72 wage schedule applied to each step of the schedule. Also, in this request was the addition of three new brackets, MA + 10, MA+20, and MA+30, at $200 increase per bracket. (2) A change from a flat rate to a percent of base salary for extra-duty, non-athletic assignments. (3) Tuition for a maximum of three semester hours of additional formal study.

The Board's counter offers were as follows: (1) A $200 across the board increase. No changes in the wage structure. (2) A three step scale on an absolute hourly basis for extra-duty, non-athletic assignments. (3) Tutition for a maximum of three term hours for additional graduate study.

According to the figures presented, the estimate of the Association's request would amount to the following annual totals: Salaries $1,747.388.00; Extra-duty non-athletic assignments $ 15,824.00 ($ 14,726.00 for the assignments actually filled at this time); $ 4,945.00 graduate study tuition costs on a semester hour basis.

The estimated annual costs of the Board's proposal for the above three items would be: Salaries, $ 1,685,500.00; Extra-duty non-athletic assignments $ 13,000.00; Tuition on a term hour basis, $3,296.00.

The increased cost of the Association's proposal over that of the Board's proposal would be: Salaries, $ 61,888.00; extra-duty non-athletic assignments $ 2,824.00, and Tuition, $ 1,649.00, or an annual increase of $ 66,361.00.

Although each request involving direct cost increases must be considered, they all must be considered as a total package.

Not taking into account any problem with "ability to pay", the Association's salary increase request is not unreasonable in light of today's market. Five and one-half percent is within the Federal Government's wage and price guide lines, and is fairly close to the industrial wage increase pattern over the past year. In addition, there has been an increase in the cost-of-living since the effective date of the prior Agreement. The Association offered a 3.4% figure for this increase.

This is the BLS index for the Detroit area, Fiscal 1972. Past experience has shown that the Grand Rapids area does not run quite as high as Detroit, and would probably be closer to the national index. This was 2.9% for the above period.

In presenting this figure, the Association pointed out that the Board's offer of a flat $200 applied to each Step, did not compensate for the cost-of-living increase. However, this analysis was based upon the 3.4% figure.

Calculating the Board's offer in terms of percent, shows that it amounts to 2.5% on the BA Min. to 1.47% on the MA + 18 max.

The Board's contention throughout all of its presentation was that its offer constituted a limit of its available resources. In support, it submitted exhibits of the taxes levied, taxes collected and uncollected, estimated delinquent taxes, anticipated State Aid , and an estimated operating budget for 1972-73.

It is impossible to mount an effective challenge of such figures, particularly the budget, without an extensive and detailed anaylsis of income and outgo, and more important, without access to all related information and figures. Therefore, for the most part, the Fact Finder accepts the Board's figures as submitted.

However, one question that was raised by the Association, and was never clearly explained, was the Board's estimate of uncollected or uncollectible taxes. The Board's Exhibit #10 of this series, shows the average tax collection for 1967-71 to be 96.27%. According to Exhibit 5, the 1972-73 Estimated Operating Budget, the estimated tax revenue is $ 1,900,000. Although the Fact Finder did not deny this figure,

he was unable to reconcile it with the stated taxes levied, and the experienced level of tax collections. . However, Mr. Koets stated he felt his tax revenue figure was realistic, and under the circumstances, this opinion has to be accepted.

In his analysis of this issue, the Fact Finder reviewed the salary levels, after adding the Board's offer, with the 1972-73 levels of comparable districts. In considering a "comparable" district, the Fact Finder used those districts that are similar to Kenowa Hills, in that they contain some industry, some rural, and average residential. Districts with a heavy concentration of industry, or high accessed residential property value, do not provide as equitable a comparision as districts such as Grandville, Kentwood, Rockford, Lowell, etc.

This analysis indicates, that if the Board's offer was added to the current salary levels, the BA minimum and the MA minimum would be relatively close to the average. However, as the Steps in each track increased, the level falls more and more below the average of comparable steps in other districts. Therefore, for this reason the Fact Finder does not feel that any increase should be applied as a flat rate to all Steps. This would only further narrow the Step differentials, and from a comparative standpoint, make the higher Steps even less competitive.

Although the Fact Finder stated earlier he did not consider the Association's request unreasonable, in the final analysis the problem becomes a question of where the money is to come from. The voters of the District already supply over 60% of the operating expenses through millage. If State wide experiences are any criteria, any request for

additional millage would undoubtedly be defeated at this time. Therefore, any increase in teachers' salaries must come out of the current budget. It may be argued there is some fat in this budget, even that there is sufficient to handle the full amount of the Association's request. However, this can be only speculation at this point that will have to wait until the end of the fiscal year for confirmation.

After considering all the ramifications of this issue, it is the recommendation of the Fact Finder, the Association's salary request be reduced to a 3½ percent increase. According to the figures available to the Fact Finder, this would amount to approximately $ 24,500 more than the present Board offer, and he believes it can be found within the current budget. From the teachers' point of view, it will compensate for the increase in cost-of-living plus a slight additional raise.

It is further recommended the current salary structure not be changed at this time by the addition of the MA +10 and MA+20 tracks. Although these tracks are quite common in area salary structures, this year, at least at Kenowa Hills, their addition would effect a relatively few people; therefore, considering the situation, this request should be postponed to a more propitious time.

Non-Athletic Extra Duty Assignments

After studying this issue, the Fact Finder could not help becoming aware of a situation at Kenowa Hills that complicates the problem, and must be considered in any determination. This is in the number of extra duty non-athletic assignments. Of all the neighboring districts researched, in terms of assignments the two closest have 21, as against Kenowa Hill's 30. One district has as few as seven, and the average for

all districts is sixteen. The pattern of payment for the various classifications is mixed; one district may pay considerably more than another district for the same classification, apparently emphasizing the importance attached to some particular function.

However, when considering the over all question of equitable pay for each classification, the total number of classifications cannot be ignored because of its impact on the total cost of the program.

A relatively few years ago teachers' salaries were low, and the need for a teacher to take on extra duty assignments in order to make ends meet was not only understandable, but necessary. However, in the past several years, teachers's salaries have risen to a point where they are now reasonably in line, and the necessity to augment their base salary should have diminished. By the same token, it would seem only reasonable that the number of extra duty assignments would also diminish. However, the Association's proposal includes three new classifications. Also, although it is appreciated that districts have their own perculiarities, it is noted the Kenowa extra duty list contains several classifications that do not appear in any other district. Further, a review of the current pay schedule indicates there is no rhyme or reason to the various rates with, what appears to be, considerable inequity in several areas.

Considering the entire picture, it is the conclusion of the Fact Finder that the entire extra duty non-athletic program should be re-evaluated. This should be done by a joint committee with the objective of reducing the number of classifications to only those that will serve the

best interests of the Kenowa Hills school system. Functions that can be handled by students, just as well as by adults, should be turned over to the students. Until this re-evaluation and re-structering can be done, it is recommeded the pay schedule for extra duty non-athletic assignments remain as it is.

Tution Payments for Graduate Study.

The Association requested the Board pay tuition costs for graduate credits earned up to $90.00 per teacher per contract year. The primary difference between the Association's request, and a counter offer made by the Board, was that the Board's offer was for "term" hours as opposed to "semester" hours as requested by the Association.

The 1971-72 Agreement makes no provision of tuition payment.

Most districts do pay for graduate study, and either express this payment as for "tuition" or for "semester" hours. The Fact Finder could not find a contractual provision that referred to "term" hours, although this is not to say it does not appear in some district's contract.

It is the opinion of the Fact Finder that the Association's request is in keeping with comparable districts; however, in view of what appears to be a tight budget at Kenowa Hills for 1972-73, and considering the recommended salary increase of 3½ percent across the board, it is felt any monies available should be applied the bread-and-butter issue of salaries. Therefore, it is recommended the teachers accept the offer of the Board, for this year at least.

The Fact Finder is not so naive as to expect the recommendations and suggestions contained herein to be accepted by the Parties as presented. However, it is hoped they may serve as possible avenues to be further explored in the process of reaching a mutual agreement on the various issues.

The Fact Finder has noted in his research that a majority of the districts have been able to come to multi-year agreements. The advantages are obvious, and it is recommended the Kenowa Hills Education Association and the Kenowa Hills Board of Public Schools also consider these advantages, and attempt to find mutually acceptable grounds that will permit a contract of more than one year.

Finally, it was impossible for the Fact Finder not to be aware of a certain antagonism, or at least lack of tolerance, that entered the Hearing, particularly when any one of the immediate members of either Party had occasion to explain a point, or engage in discussion. For this reason it is suggested, in the interests of both Parties, that Mr. Mroz, Attorney for the Board, and Mr. Masters who represented the Association at the Hearing, meet alone in an attempt to reach a settlement of the issues, or at least reduce them to a point where the Parties themselves may be able to resolve their differences.

Samuel S. Shaw

Samuel S. Shaw, Fact Finder
Grand Rapids, Michigan
November 13, 1972